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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Lead Case No. 12-12020-mg Adv. Proc. No. 12-02049-mg
- - - - -x
In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.
- - - - -x
BURNETT,
Plaintiff,
- against -
GMAC MORTGAGE, LLC,
Defendant.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York
January 16, 2013
10:07 AM

B E F O R E:
HON. MARTIN GLENN
U.S. BANKRUPTCY JUDGE

(CC: Doc# 2544) Motion Pursuant to 11 U.S.C. 105, 363(b), (f) and (m) and Fed. R. Bankr. P. 2002, 6004 and 9007 for Orders: (A)(I) Authorizing and Approving Sale Procedures; (II) Scheduling Bid Deadline and Sale Hearing; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief and (B)(I) Authorizing the Sale of Certain FHA Loans Free and Clear of Liens, Claims, Encumbrances and Other Interests; (II) Authorizing and Approving Mortgage Loan Purchase and Interim Servicing Agreement; and (III) Granting Related Relief.

(CC: Doc# 2520) Debtors' Motion for a Supplemental Order Under Bankruptcy Code Sections 363, 1107(a) and 1108 to the Final Wages Order Authorizing the Debtors to Make Payments to the Employees Under the Residential Capital, LLC Annual Incentive Plan.

(Doc no. 2590) Hearing RE: Joint Motion for Findings of Fact, Conclusions at Law Judgment and Order filed by Pamela Z. Hill.

Adj. Hearing Re: Cure Objections. (Related Document no. 61)

Doc# 2570 Adjournment of Hearing on Objections of Digital
Lewisville, LLC to Debtors' Motion for Orders (A)(I)
Authorizing and Approving Sale Procedures, Including Break-Up
Fee and Expense Reimbursement; (II) Scheduling Bid Deadline and
Sale Hearing; (III) Approving Form and Manner of Notice
Thereof; and (IV) Granting Related Relief and (B)(I)
Authorizing the Sale of Certain Assets Free and Clear of Liens,
Claims, Encumbrances, and Other Interests; (II) Authorizing and
Approving Asset Purchase Agreements Thereto; (III) Approving
the Assumption and Assignment of Certain Executory Contracts
and Unexpired Leases Related Thereto; and (IV) Granting Related
Relief.

Adversary proceeding: 12-02049-mg Burnett v. GMAC MORTGAGE, LLC
Pre-trial Conference

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ALSO PRESENT: (TELEPHONICALLY)

CONRAD P. BURNETT, Pro Se

MICHAEL M. MOORE, Pro Se

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated.

3 We're here in Residential Capital, number 12-12020.

4 Mr. Goren?

5 MR. GOREN: Thank you, Your Honor. Before we get into
6 the agenda, I thought perhaps it would be helpful to give a
7 brief status update on a couple of the material matters going
8 on in the case.

9 THE COURT: Thank you.

10 MR. GOREN: First off, the sale. We're moving forward
11 full bore for an anticipated closing of both the platform sale
12 and the whole loan sale by January 31st. The company's
13 executives and employees, as well as its professionals, have
14 been working around the clock to try and get to that date;
15 reviewing contract assignments, cure claims, the like. There's
16 a lot that needs to get done.

17 At this point, the largest contingency on the platform
18 sale is getting the consents from the GSEs. There've been
19 round-the-clock discussions with the GSEs, trying to resolve
20 their consent to the assignment issues, as well as the related
21 cure claims; daily meetings and calls between them, to try and
22 get that done. We think we're getting pretty close to the
23 consent to assignment and cure resolutions, but there's still a
24 bit of work that needs to be done on that.

25 While the sale order gives us the right, with the

1 consent of the committee, to resolve cure claims without coming
2 back to the Court, because we expect that their resolutions
3 might be slightly more complex than typical, may have mutual
4 releases or the like, we figured we would probably put those on
5 notice of presentment, so everyone would have a chance to take
6 a look at them.

7 THE COURT: Okay.

8 MR. GOREN: So unless Your Honor has any questions on
9 the sale, I thought I'd also give a brief update on the
10 mediation process, as well.

11 THE COURT: Please.

12 MR. GOREN: That process began late last year. From
13 the debtors' perspective, it's been extremely helpful and
14 productive so far. We met with Judge Peck in person and
15 telephonically three times and expect to meet with him again,
16 maybe as early as next week. We understand he's also been
17 speaking with a number of the other interested parties in the
18 case, just sort of going around getting their perspective on
19 the material issues and what they're looking for out of a
20 resolution here.

21 We believe he's been very constructive to the process
22 and will continue to be, going forward. So we're hopeful to
23 make some material progress over the next month, as a result of
24 that.

25 As you may recall, at the time you appointed Judge

1 Peck as the mediator, you asked the parties to agree on an
2 acceptable form of mediation order. Since Judge Peck -- from
3 speaking with him, he's still sort of getting the lay of the
4 land, speaking to the parties, sort of determining how he wants
5 to proceed here, we haven't yet put pen to paper on that. But
6 we expect, probably, in short order, he'll come back to us and
7 sort of describe how he envisions the process working from
8 here; and we'll come back with a process-type order at that
9 point.

10 THE COURT: Okay.

11 MR. GOREN: Next, Your Honor, we note on the agenda
12 that you entered interim orders with respect to the foreclosure
13 review professionals, further interim orders, namely
14 PricewaterhouseCoopers, Hudson Cook, Pepper Hamilton, that
15 continues the final hearing on those professionals until
16 February 28th.

17 In large part, the reason for the second interim order
18 was, you might have seen in the news, that many -- that the
19 Federal Reserve Board and the OCC have reached tentative
20 resolution with a lot of large financial institutions about a
21 further settlement of those liabilities, sort of, to get money
22 more directly in the hands of consumers -- borrowers, rather
23 than professionals.

24 The debtors are still closely evaluating that in
25 consultation with the creditors' committee. That process is

1 moving forward. Obviously, we're in a very different position,
2 being in bankruptcy, than the other ones. So there's a lot
3 more complexity. And as soon as we have something more to
4 report on that, we'll be --

5 THE COURT: I think I was previously advised that the
6 debtors and the committee and perhaps others were also engaged
7 in discussions with the Federal Reserve Board, in an effort to
8 try and reduce the costs associated with compliance with the
9 consent orders. Has there been any further developments on
10 that front?

11 MR. GOREN: Well, I mean, that's sort of related --

12 THE COURT: That's part of it.

13 MR. GOREN: -- to the settlement. That was -- there
14 had been a lot of talk to the Federal Reserve Board about the
15 fact that, you know, why are we paying all this money to
16 professionals. Let's figure out how much we're really going to
17 owe to borrowers and pay that money directly to borrowers,
18 without making us spend hundreds of millions of dollars to get
19 there.

20 So we're -- there's a number associated with ResCap-
21 Ally, in that settlement, and that -- nobody's signed up to
22 that number yet. There's still a lot of discussions going on.

23 THE COURT: Okay.

24 MR. GOREN: Your Honor, I believe that takes us to the
25 first item on the agenda, which is the adversary proceeding

1 matters, Burnett v. GMAC Mortgage. We've been attempting to
2 confirm an adjournment of this matter. So, I'll turn it over
3 to Mr. Rosenbaum, who's handling this.

4 THE COURT: All right, Mr. Rosenbaum?

5 Is someone on the phone? Is Mr. Burnett on the phone?

6 MR. BURNETT: Yes, this is Conrad Burnett.

7 THE COURT: All right. I'm going to let Mr. Rosenbaum
8 speak first, and then Mr. Burnett, I'll give you a chance to
9 speak.

10 MR. ROSENBAUM: Good morning, Your Honor. Norm
11 Rosenbaum for the debtors.

12 Your Honor, this is the pre-trial conference on Mr.
13 Burnett's adversary proceeding against GMAC Mortgage. We did
14 intend to adjourn this, but apparently did not communicate that
15 properly to Mr. Burnett. I don't have too much to add here,
16 Your Honor. We have reviewed the complaint.

17 I would note that Mr. Burnett's property was
18 foreclosed on in 2009 and the property went to a foreclosure
19 sale in 2010. He has had -- commenced litigation against GMAC
20 in the past on actions that were dismissed. He has filed
21 recently, this year, a lawsuit naming GMAC and others in
22 violation of the automatic stay.

23 We did ask that SilvermanAcampora reach out to Mr.
24 Burnett, I believe they left messages for him, to discuss the
25 adversary proceeding. We think this is something that would

1 benefit from a conversation with Mr. Burnett, as to the ability
2 or the efficacy of this proceeding forward. I think given the
3 allegations in the complaint, this is something we would very
4 much like to speak to him about, in terms of the timing.

5 He apparently is seeking a nondischargeability
6 determination on this --

7 THE COURT: I've read this complaint. I have no clue
8 what this is about.

9 MR. ROSENBAUM: We tried our best to determine that,
10 Your Honor. That's why we think a conversation with
11 SilvermanAcampora would make sense here.

12 THE COURT: Anybody from SilvermanAcampora here? Mr.
13 Zide, you're going to -- you're not from SilvermanAcampora,
14 but --

15 MR. ZIDE: Yes. Stephen Zide from Kramer Levin, on
16 behalf of the committee. I know SilvermanAcampora has been
17 involved in this and has been reaching out to this party.
18 They're supposed to be here today. We got an e-mail that some
19 sort of urgent emergency happened where they're going to be
20 late --

21 THE COURT: Okay.

22 MR. ZIDE: -- for this hearing. They could probably
23 give you an update when they get here.

24 THE COURT: All right. Okay.

25 MR. ZIDE: But they are involved in the process.

1 THE COURT: Thank you, Mr. Zide.

2 MR. ROSENBAUM: Well --

3 THE COURT: Go ahead, Mr. Rosenbaum.

4 MR. ROSENBAUM: -- I think it is that -- I'm not sure
5 they had sufficient contact information for Mr. Burnett, but
6 reached out to him, I think, via correspondence.

7 THE COURT: Okay. Mr. Burnett, do you want to be
8 heard?

9 MR. BURNETT: Yes, Your Honor. This complaint stems
10 from the notary Susan Turner, who authorized the sale of my
11 home to GMAC. I have a consent order from the Commonwealth of
12 Pennsylvania that there was some unlawful notary acts involved
13 in the paperwork and transaction that authorized the sale of my
14 home.

15 My home was sold while I was under a refinance order
16 from GMAC. There were two orders. I was under contract to
17 refinance the home, and they still sold the home while I was
18 refinancing the property. That's what this stems from.

19 THE COURT: Mr. Burnett --

20 MR. BURNETT: That's what my --

21 THE COURT: -- Mr. Burnett, your complaint is three
22 pages -- slightly over two pages long. I don't understand it.
23 I have no idea what it is you're complaining about. So I urge
24 you -- hold on, Mr. Burnett. Special counsel to the creditors'
25 committee was appointed to deal with consumer mortgage issues.

1 It's the law firm of SilvermanAcampora. I urge you to speak
2 with a lawyer from SilvermanAcampora. And at least it's been
3 represented that they've made an effort to be in touch with
4 you. Because I will tell you right now, unless there's some
5 clarity to what you want, your case is going to be dismissed
6 very quickly.

7 I'm very sensitive to the issues raised by consumers.
8 And I want to give everybody a fair opportunity to raise their
9 issues here. And I'm applying applicable standards. I provide
10 more leeway to pro se litigants in terms of their pleading, but
11 I don't see what claim you're asserting in this short
12 complaint.

13 What I'm going to do is adjourn this pre-trial
14 conference until the next hearing on January 29th. I am
15 directing you, Mr. Burnett, within the next week, you must be
16 in touch with lawyers from SilvermanAcampora, who are special
17 counsel to the creditors' committee to deal with borrowers.
18 They can't -- they don't represent you, but they will hopefully
19 be able to enlighten me with what, if any, issues you're
20 properly raising in this court.

21 If there's no greater clarity, and the debtor decides
22 to make a motion to dismiss, you can bring that on for that
23 January 29th hearing as well, Mr. Rosenbaum. I mean, I --
24 obviously, I don't want you to have to waste your time or the
25 Court to have to waste its time preparing.

1 But when I reviewed the papers that you filed, I
2 couldn't understand what this was all about. I'm going to give
3 you a further chance. But the first thing you absolutely must
4 do, and I'm going to ask SilvermanAcampora to advise the Court
5 at the time of the next hearing when and whether they've
6 communicated with you, and see what the status is at that time.
7 If you reach an agreement with debtors' counsel to further
8 adjourn the conference because of some progress between you,
9 I'll certainly entertain that. But otherwise, this will be on
10 the Court's calendar for January 29th.

11 Mr. Rosenbaum?

12 MR. ROSENBAUM: Your Honor, may I just make one
13 suggestion? If Mr. Burnett would like to contact me at my
14 office and provide us with his telephone number, and if he has
15 e-mail communication, I can relay that to SilvermanAcampora.

16 THE COURT: That would be very helpful. Will you do
17 that, Mr. Burnett, call Mr. Burnett.

18 MR. BURNETT: Yes, I --

19 THE COURT: Okay.

20 MR. BURNETT: Yes, I will, Your Honor. Mr. Rosenbaum,
21 would you forward your number to me, please?

22 THE COURT: Well, he doesn't know how to forward the
23 number to you, because your complaint doesn't have an e-mail
24 address or a telephone number.

25 Mr. Zide, do you have the information?

1 MR. ZIDE: I have the contact information for
2 SilvermanAcampora, if you would like it.

3 THE COURT: Well, let's -- Mr. Burnett, do you have an
4 e-mail address?

5 MR. BURNETT: Yes, I do.

6 THE COURT: Could you tell us what your e-mail address
7 is?

8 MR. BURNETT: It's my initials, CB1359@yahoo.com.

9 THE COURT: Okay. All right. So Mr. Rosenbaum -- let
10 me just read it back. CB1359@yahoo.com. Is that correct, Mr.
11 Burnett?

12 MR. BURNETT: Yes.

13 THE COURT: Okay. So Mr. Zide and Mr. Rosenbaum, have
14 it. Mr. Zide will make sure that SilvermanAcampora has it. So
15 you need to be in touch with the SilvermanAcampora people, and
16 let's see if we can make sense out of this, and then you can
17 speak further -- since you're not represented by counsel, Mr.
18 Rosenbaum can speak with you directly as well. But otherwise,
19 I'm going to adjourn the hearing today and put it on the
20 calendar for January 29th. All right, Mr. Burnett?

21 MR. BURNETT: Thank you very much.

22 THE COURT: Okay, Mr. Rosenbaum?

23 MR. ROSENBAUM: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. ROSENBAUM: I believe the committee wanted to make

1 a statement on one of the pending retention applications?

2 MR. MASUMOTO: If I may, Your Honor?

3 THE COURT: Mr. Masumoto?

4 MR. MASUMOTO: Good morning, Your Honor. Brian
5 Masumoto for the Office of the United States Trustee. Your
6 Honor, we just wanted to make a brief statement for the record
7 regarding the retention of Wilmer Cutler Pickering Hale and
8 Dorr, a retention that the committee has put forth.

9 When we were first initially contacted about this
10 retention, we advised the committee of our concern with Wilmer
11 Hale's situation, whereby they currently represent PWC,
12 PricewaterhouseCoopers, with respect to the foreclosure review
13 and the consent order. The proposed retention, as one of the
14 primary purposes, was in fact seeking to terminate the
15 foreclosure review process. So we had -- from our perspective,
16 we saw a potential concern with Wilmer Hale on one hand
17 representing the committee, seeking to terminate what might be
18 a revenue stream of up to 250 million dollars, for a major
19 client of theirs, notwithstanding any ethical walls.

20 Having said that, as everyone has been made aware
21 about the current events regarding the Fed and the different
22 agreements, as well as statements in the press regarding
23 ResCap's desire to go along with the agreements that have been
24 put forth by the Federal Reserve Board, the issue that we were
25 concerned about should go away. But we did want to indicate

1 for the record that should that expectation not come to be, and
2 in fact, the concern that we had about the potential conflict
3 continues, or persists in this case, we would want to be able
4 to raise that concern going forward.

5 We also wanted to reserve -- and I don't think it's
6 necessary to reserve -- but if, in fact, while retained for the
7 committee, in negotiations with the Fed, that there was any
8 agreement that ended up being detrimental to the estate vis-a-
9 vis PWC's role as a foreclosure review -- the foreclosure
10 review professional, we would obviously be -- would want to be
11 in a position to raise that, as a matter of conflict.

12 THE COURT: Thank you very much, Mr. Masumoto.

13 MR. MASUMOTO: Thank you, Your Honor.

14 THE COURT: Mr. Zide?

15 MR. ZIDE: Yes. If I could just make a quick
16 statement on that? Stephen Zide on behalf -- of Kramer Levin,
17 on behalf of the committee.

18 The committee fully understood the issue when they
19 retained Wilmer Hale. This was fully disclosed. The committee
20 appreciated it. An ethical wall was put in place. And the
21 committee also received a waiver from Wilmer Hale.

22 We also would just like to point out that the issues
23 with PWC are only one small component of what Wilmer Hale will
24 be doing. There's going to be extensive negotiations with the
25 FRB. Wilmer Hale is taking -- is going to be taking the lead

1 on that for the committee. Wilmer Hale is also here at the
2 hearing today. So I just wanted to point that out --

3 THE COURT: Okay.

4 MR. ZIDE: -- for Your Honor.

5 THE COURT: Obviously I'm not ruling on anything
6 today. And we'll wait and see what direction this goes in and
7 what position the U.S. Trustee takes. The only thing I would
8 say, Mr. Zide; the law about conflicts waives and ethical
9 screens in bankruptcy is quite different than it is outside of
10 bankruptcy. There are decisions, including my decision in In
11 re Project Orange, that raise -- and there's a decision by
12 Judge Bernstein that I cite in Project Orange, that certainly
13 raise questions whether conflicts waivers and ethics screens
14 are effective to satisfy the disinterestedness standards under
15 the Bankruptcy Code.

16 I'm not ruling on anything now. I'm just alerting you
17 right now. We'll see whether -- I think the first thing to see
18 is whether you're able to satisfy the U.S. Trustee, and let's
19 see where we go. But I just -- okay.

20 Mr. Rosenbaum?

21 MR. ROSENBAUM: Your Honor, the next matter on the
22 agenda is the uncontested matters at page 7. That's docket
23 number 2544, the motion to sell the FHA loans. And I'll cede
24 the podium to Jennifer Marines.

25 MS. MARINES: Good morning, Your Honor. Jennifer

1 Marines, of Morrison & Foerster, on behalf of the debtors. I
2 will be covering the debtors' motion for approval of procedures
3 in connection with the debtors' sale of certain of their FHA
4 insured loans.

5 THE COURT: This is only a subset of the FHA loans
6 that the debtor holds, right?

7 MS. MARINES: Exactly. It's only a subset. And I'll
8 explain that --

9 THE COURT: Okay.

10 MS. MARINES: -- in one moment. As Mr. Goren
11 previously indicated, the debtors have been working diligently
12 to close the whole loan sale as well as the platform sale. And
13 we intend to do so by the end of this month, if not shortly
14 thereafter. But even after that closing, the debtors still
15 have significant and material assets on their books, namely
16 these loans that are insured by the FHA and the VA. There is
17 approximate -- there are approximately one billion dollars'
18 worth of these loans on the debtors' books currently.

19 If it's okay with Your Honor, I would like to just
20 very, very briefly walk through how the FHA loans work within
21 the construct of the debtors' portfolio.

22 THE COURT: Go ahead.

23 MS. MARINES: So these are loans that are fully
24 secured by -- excuse me -- fully insured by the FHA. So when a
25 borrower defaults on his or her loan and the debtor repossesses

1 that property and then forecloses on the property, the FHA
2 covers the delta between what the debtors receive from proceeds
3 of that foreclosure and the outstanding principal balance of
4 the loan.

5 So basically, these loans should be money good, but
6 they take about thirty to thirty-six months to fully monetize
7 in the ordinary course, sometimes longer, depending on states'
8 time frames for foreclosures. And in some instances, the
9 borrowers themselves are in bankruptcy, and that extends the
10 process.

11 Historically, the debtors sell their FHA loans into
12 Ginnie Mae securitizations. However, when one of these loans
13 becomes nonperforming because the borrower is not paying
14 principal and/or interest on these, under certain
15 circumstances, the debtors are required to repurchase these
16 loans. Then they sit on the debtors' books until either the
17 loans become performing again, and the debtors are able to
18 resell them into the Ginnie Mae securitizations, or until the
19 debtors foreclose on the properties.

20 So through this motion, like Your Honor said, the
21 debtors are seeking to sell a subset of the FHA loans. And the
22 debtors chose this subset based primarily on how easily a
23 potential purchaser could verify the loan value. So basically
24 the --

25 THE COURT: Are these all performing loans?

1 MS. MARINES: I'm sorry?

2 THE COURT: Are these all performing loans?

3 MS. MARINES: No, they're not performing. By virtue
4 of that that, that's why they're sitting on the debtors' books.

5 THE COURT: All right. They were repurchased?

6 MS. MARINES: They were repurchased. I'm sorry.

7 These are on the debtor's books --

8 THE COURT: Got it.

9 MS. MARINES: -- because they were repurchased --

10 THE COURT: Okay. All right.

11 MS. MARINES: -- from Ginnie Mae securitization.

12 But so the debtors chose this subset of loans
13 basically because these loans had the best collateral
14 documentation and had also been reviewed for compliance with
15 industry standards. So the debtors believed that a potential
16 purchaser looking at these loans would be able to most easily
17 verify the value of these loans.

18 So if, through this process, the debtors are able to
19 secure an accept --

20 THE COURT: So the one billion in loans, FHA/VA loans,
21 that are on the debtors' books, were all nonperforming that
22 were repurchased from securitizations?

23 MS. MARINES: Yes, I believe that's correct. And this
24 subset is approximately 130 million dollars' worth in value.

25 So if through this process the debtors are able to

1 secure an acceptable price for these loans, and acceptable
2 price is going to be determined in consultation with the
3 creditors' committee as well as AFI and the JSBs, because it's
4 their collateral -- so if we are able to receive an acceptable
5 price for these, the debtors may seek to sell additional pools
6 of loans at a later date, or we may allow these to monetize in
7 the ordinary course; whatever maximizes value for the estate
8 and the creditors.

9 As we noted in our papers, the debtors, prior to
10 bankruptcy, routinely sold large pools of loans as part of
11 their business practice, either to get cash or to relieve
12 themselves of the servicing costs that are associated with
13 these loans. So while we do believe that this is in the
14 ordinary course of business, out of an abundance of caution,
15 and due to the sheer volume and dollar figure that's attached
16 to these loans, we wanted to seek court approval and also make
17 sure that everyone had notice of the sale and of the
18 procedures.

19 Throughout the process we've been in consultation with
20 the UCC as well as AFI and the JSBs. And they -- we believe
21 that they all support the motion and the procedures. The
22 procedures provide those parties with certain consultation
23 rights. Among others, those are consultation rights with
24 respect to reviewing the bids that we receive, and then
25 determining what's highest and best, rejecting bids on an

1 aggregate or on a loan-by-loan basis, where the debtors and the
2 interested parties don't believe that the bid accurately
3 reflects the value of those loans. And they also have
4 consultation rights with respect to determining not to proceed
5 with the sale and to let these monetize in the ordinary course
6 of business.

7 Only one party has filed papers in connection with the
8 papers, and that's the U.S. government. They filed a
9 reservation of rights, noting their concern that the sale free
10 and clear of these loans will somehow affect whatever setoff
11 rights they may or may not have. But I think all of the
12 parties, including the government, realizes that that's really
13 a sale objection and not an objection to the procedures today.
14 So for the purposes of what's going forward, we believe that
15 this matter is uncontested at this point.

16 With respect to the sale procedures, I would like to
17 note that we attempted to closely mimic the debtors' pre-
18 petition practices of selling these loans. And we did this to
19 maximize interest from the normal industry players. While
20 there's no formal auction that you generally see with respect
21 to a 363 sale, there is certainly a competitive bidding
22 process. And if Your Honor has any specific questions about
23 the procedures now --

24 THE COURT: I guess the question I have is, because
25 you have -- you reserved the right to withdraw loans from the

1 pool --

2 MS. MARINES: Yes.

3 THE COURT: -- right? How do you make that
4 determination? Do you get -- you get aggregate bids for an
5 entire pool; how do you decide? I mean, it's not a per-loan
6 basis that people are bidding.

7 MS. MARINES: So there's a dual-step process. In the
8 first instance, the bidders will be receiving an offering
9 memorandum and will be able to look at the loan tapes and make
10 a bid on an aggregate basis. So we're asking for everyone to
11 make their highest and best bids.

12 Once we determine who the highest and best bidder is,
13 that successful bidder will be able to look at the loans on a
14 loan-by-loan basis and will get much more extensive diligence,
15 at which point, they can -- or actually they're required to
16 make a bid broken down on a loan-by-loan basis. So I believe
17 the way that it works is that if they attribute value to a
18 single loan and we don't agree with that value or if it drags
19 down the whole aggregate price, then we are able, in
20 consultation with the interested parties, to pull that loan.

21 THE COURT: Approximately how many loans are in this
22 pool?

23 MS. MARINES: Sorry, I'm just looking back to our
24 financial advisor.

25 THE COURT: I saw the aggregate. And the value you've

1 ascribed to it, is that face value or are you using -- because
2 these were all nonperforming loans that you've bought back.
3 How have you placed a value on this pool of loans.

4 MS. MARINES: I believe it's the carry value on the
5 debtors' books. Oh, I'm sorry -- okay. I apologize. It's the
6 unpaid principal balance. But we believe that we're going to
7 get very close to par on those.

8 THE COURT: All right. And the number of loans in
9 this pool?

10 MS. MARINES: That I --
11 I apologize.

12 THE COURT: That's okay. I didn't mean to create a
13 whole --

14 MS. MARINES: Many people are consulting, Your Honor.

15 THE COURT: I can see that. It wasn't a trick
16 question.

17 MS. MARINES: 650.

18 THE COURT: 600 and --

19 MS. MARINES: 650.

20 THE COURT: Okay. All right. Does anybody else wish
21 to be heard with respect to the motion to approve bidding
22 procedures? Mr. Zide?

23 MR. ZIDE: Stephen Zide from Kramer Levin, on behalf
24 of the committee. We agree with how she characterized the
25 motion. We were intimately involved in setting up the process

1 and the procedures. And we did focus on that issue that you
2 just mentioned, Your Honor, on how this process would work,
3 that there would be a number of bids coming in, and then there
4 would be a follow-up diligence process where they could seek to
5 lower the prices. And then the commi -- the debtors, in
6 consultation with the committee, can take loans out of there.

7 We intend to be heavily involved in the process. And
8 we're supportive of the debtors going out with this to see if
9 they can get a --

10 THE COURT: So is it only the high bidder that gets to
11 do the detailed diligence?

12 MR. ZIDE: Yes.

13 THE COURT: So what happens? They come back and they
14 do their diligence and they reduce the value by thirty million
15 dollars. Okay, what happens then? You're not satisfied
16 with -- I mean, are your only choices then to pull out the
17 loans that they questioned, or do you -- I mean, does the
18 second highest -- do you have a reserve second-highest bidder?
19 Do they get to -- do you get a chance to have them come do
20 their diligence?

21 I mean, it's all well and good when you get that
22 first-round bid, it's highest and best, and then they do their
23 diligence. They're the only ones doing the diligence. They
24 come back and you get sticker shock when they go to reduce the
25 price. Is your only choice to pull loans out of it and sell

1 the smaller volume of loans? You may -- the second highest
2 bidder may have been well in excess of the reduced amount of
3 the bid.

4 MR. ZIDE: If I may? I think the way it works, Your
5 Honor, is that I think the concern the debtors had was that no
6 bidder was going to make a high enough bid --

7 THE COURT: They didn't want to do --

8 MR. ZIDE: -- until they did the diligence.

9 THE COURT: Right.

10 MR. ZIDE: So even if someone offered a high bid, you
11 would never know where they're going to come out until they do
12 that extensive follow-up diligence. And if where they come
13 back is not acceptable to the committee --

14 THE COURT: Can you pull the whole sale?

15 MR. ZIDE: I believe we could either pull the whole
16 sale or agree to the reduced price or just pull certain loans
17 out, yes.

18 THE COURT: Okay. All right, anybody else wish to be
19 heard?

20 MR. CORDARO: Good morning, Your Honor. Joseph
21 Cordaro, Assistant United States Attorney, on behalf of the
22 United States. And just for the record, the number is 654. I
23 know, because HUD is reviewing them. They've been provided by
24 the debtors.

25 And I'm not going to rehash what we said in our

1 statement. I will only say that one of the selling points, it
2 seemed, of the motion, was that the purchaser could be assured,
3 I think was the word, that the loans would qualify for FHA
4 insurance. Obviously, that's a decision within the province of
5 HUD. And notwithstanding whatever the motion defines as an
6 "interested party", when we're talking about FHA insurance,
7 we're talking about taxpayer dollars. And the government is
8 clearly interested.

9 So I would hope that going forward, that we would be
10 consulted, at least, and kept abreast of how things are
11 developing. Because we didn't know this was coming before the
12 motion was filed. So going forward, we hope that, at least
13 with respect to this tranche of loans, and then any other loans
14 that the debtors may seek to sell that are FHA-insured, that we
15 would have notice and be able to look into these issues ahead
16 of time.

17 THE COURT: Well, let me ask this. I mean, when is
18 this -- if this process runs its course, when do you anticipate
19 actually coming to the Court to get final approval?

20 MS. MARINES: On April 11th.

21 THE COURT: Okay. Have you and Mr. Cordaro or anyone
22 else from the government sat down and tried scope out how
23 you're going to solve the issues that the U.S. has raised?

24 MS. MARINES: I believe --

25 THE COURT: I mean, they're proceeds of loans that can

1 be escrowed, some portion of it, to satisfy, what, if any
2 rights to setoff the government may have. I mean, what's -- I
3 don't want to know the details of settlement negotiations, but
4 are you making progress in trying to resolve these issues with
5 the government?

6 The government's on every side of this. I mean, they
7 own seventy-four percent of Ally, of AFI. They -- so.

8 MS. MARINES: Certainly, Your Honor, between now and
9 April 11th, we will -- we will --

10 THE COURT: Don't wait till April 10th.

11 MS. MARINES: Yeah -- no.

12 THE COURT: Mr. Cordaro?

13 MR. CORDARO: Thank you, Your Honor. Unless the Court
14 has any further questions for the government --

15 THE COURT: Well, I guess -- I want to know that
16 there's a process underway to try and resolve these issues. I
17 don't want it to get to April and have a fire drill at the end,
18 because these issues are holding fire, the sale hearing is
19 adjourned, or whatever. There should be plenty of time to try
20 and resolve these issue.

21 MR. CORDARO: Yes, Your Honor. And that was the
22 reason that we filed the statement now instead of later.
23 Though we acknowledge and think that it really is technically a
24 "sale objection", we wanted our position out now. Because that
25 is exactly the situation we wanted to foreclose, the fire drill

1 in April.

2 THE COURT: All right. Do we have -- what hearings do
3 we have in February? I mean, I'd like a status report at some
4 point in February about the efforts to resolve the issues with
5 the United States, so that assuming you get satisfactory bids,
6 that you can actually go ahead and close a sale.

7 And obviously, this is only the first of such sales.
8 You say you've got a billion dollars of these loans on the
9 books. If you're successful here, I assume you're going to do
10 the same thing again, hopefully, soon.

11 MS. MARINES: Okay. That's, fine, Your Honor. We
12 have --

13 THE COURT: So do we have -- do you know, Mr. Goren,
14 do we -- I don't know, do we have --

15 MS. MARINES: The 7th and the 28th in February.

16 THE COURT: All right. So let's do it for February
17 28th. I'll give you some time to see whether you can make some
18 progress. So let's get this on the agenda, Mr. Goren, for
19 February 28th. And that gives you time to work with the United
20 States to see whether you can come to a -- this ought to be
21 solvable.

22 MR. GOREN: I agree one hundred percent, Your Honor.
23 I mean, we've spoken preliminarily with the government. We'll
24 continue speaking with them.

25 THE COURT: Okay.

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35

1 MR. GOREN: Hopefully we'll get this resolved --

2 THE COURT: Okay.

3 MR. GOREN: -- before February 28th.

4 THE COURT: All right. So the motion is approved.

5 MR. GOREN: Thank you, Your Honor.

6 THE COURT: The motion is granted. Thank you very
7 much.

8 MS. MARINES: Thank you. I have a copy of the black
9 line. I believe chambers received it this morning.

10 THE COURT: You know, I --

11 MS. MARINES: I'm happy to hand it up.

12 THE COURT: Hang on. Let me see if I have it. I have
13 it. This is Exhibit 5 to the stack of what you gave me this
14 morning?

15 MS. MARINES: Exhibit 3. If you would like, I have
16 copies.

17 THE COURT: No. I have two documents, one labeled
18 Exhibit 3, one Exhibit 5. Both are entitled "Black-Line of FHA
19 Sale Procedure Order". Oh, one's sale approval order.

20 MS. MARINES: The sale procedures order is Exhibit 3.

21 THE COURT: Okay. All right, got it. Let me look at
22 it quickly, okay? And actually I did look at this this
23 morning. That's fine. So it's granted.

24 MS. MARINES: Thank you.

25 THE COURT: Just -- we'll just get a disc from you.

1 MS. MARINES: Absolutely.

2 THE COURT: Okay, thank you very much.

3 MS. MARINES: Thank you. And I believe the next
4 matter is the annual incentive program, which is going forward
5 as a status conference.

6 THE COURT: Status conference, right. Mr. Goren?

7 MR. GOREN: Thank you, Your Honor. Todd Goren,
8 Morrison & Foerster, on behalf of the debtors.

9 As Ms. Marines just noted, this is just a status
10 conference on the debtors' motion to approve their annual
11 incentive plan payments. Two objections were filed to the
12 motion, one by the creditors' committee, which I'm pleased to
13 report, we have resolved; and one by the U.S. Trustee. We're
14 hopeful that we'll be able to resolve the U.S. Trustee's
15 objection, but we haven't yet been able to do so.

16 THE COURT: Let me ask this. Mr. Masumoto, is your
17 objection only as to payments to the KEIP participants?

18 MR. MASUMOTO: No, Your Honor. It's technically, I
19 guess, both the KEIP and the KERP. We did not object to the
20 payments of the overwhelming majority of 2,800 other non-KEIP
21 and KERP participants. We deferred to the debtors and the
22 committee as to whether or not that's justified under the
23 circumstances.

24 At the moment, to answer, again, directly to your
25 question, it's both the KEIP and the KERP that we have

1 outstanding.

2 THE COURT: Okay. And so Mr. Goren, how many people
3 were in the KEIP-KERP? Really, where I'm going is, I mean, it
4 sounded to me -- it looked to me, that as to the vast majority
5 of employees who would be covered by the annual incentive plan,
6 there is no objection. And so I'm raising the issue, if
7 there's no objection as to that, ask for approval for that
8 portion of it, and then work to resolve the remainder. You
9 want to keep everybody hanging until you get the whole thing
10 worked out?

11 MR. GOREN: No. I think that's very productive. I
12 think that does make a lot of sense for --

13 THE COURT: Mr. Masumoto, is that acceptable to you?

14 MR. MASUMOTO: Absolutely, Your Honor. I just wanted
15 to make clear that based on my understanding, the AIP funding
16 pool was designed to be 33.4. Based on the concessions of the
17 committee, that would be reduced by about 2.6 million dollars.
18 I just wanted to make it clear that the concessions that were
19 made don't enrich the remaining parties. That pool would be
20 reduced --

21 THE COURT: Okay, Mr. Zide, would it be acceptable to
22 the committee to have an order entered approving it as to all
23 of the employees who are not part of the KEIP and KERP?

24 MR. ZIDE: Absolutely, Your Honor.

25 THE COURT: Okay. Mr. Goren, why don't you -- do an

1 order in a form acceptable to the committee and to the U.S.
2 Trustee. Let's get that portion of it done. See if you can
3 resolve the remaining issues with the U.S. Trustee. If not,
4 get it on for the next hearing, and I'll deal with it.

5 MR. GOREN: Okay. So I mean, we'd like to set it for,
6 at this point, for an evidentiary hearing. I think the next
7 hearing's on the 29th.

8 THE COURT: Okay.

9 MR. GOREN: So we'll do that.

10 THE COURT: Depending on how long the next hearing is.
11 I'm not sure we're going to do an evidentiary hearing on the
12 29th. If you need an evidentiary hearing, what I would suggest
13 is that you and Mr. Masumoto and committee's counsel, if
14 appropriate, contact chambers. We'll have a telephone
15 conference. I just want to get a better sense of what the
16 factual issues are going to be. Is there any discovery that --
17 am I going to get written narrative direct with declarants
18 available for cross? Does Mr. Masumoto wish to take any
19 depositions?

20 I take it the committee is -- you've satisfied your
21 objections as to everybody at this point, Mr. Zipe?

22 MR. ZIDE: That's correct.

23 THE COURT: So it's really just the U.S. Trustee, at
24 this point. Okay.

25 MR. GOREN: Yes. I mean, if it's helpful, we -- based

1 on negotiations with the committee, we agreed to reduce the
2 pool by about eighteen percent. So that's --

3 THE COURT: Okay. But I -- look, so let's proceed
4 this way. Yes, we can -- you and Mr. Masumoto ought to
5 continue, or whichever of your colleagues is dealing with this.
6 See if you can resolve the issues. If you need an evidentiary
7 hearing, arrange for a telephone conference next week one
8 afternoon, and we'll work out a schedule. I just want to make
9 sure the ground rules are clear as to what's going to be
10 covered in the evidentiary hearing. I'll give you a date for
11 it.

12 MR. GOREN: Would there be a date before the end of
13 the month? I mean, there's a lot of concern on the debtors'
14 part that --

15 THE COURT: Sure.

16 MR. GOREN: -- if the -- particularly if the sale
17 closing extends beyond the 31st, that it's critically important
18 to get this in place before then.

19 THE COURT: Before when?

20 MR. GOREN: Before the end of the month, if --

21 THE COURT: I don't think so. Look, it's possible.
22 Work with Mr. Masumoto -- work with Mr. Masumoto, see if you
23 can, as narrowly as possible, define the factual disputes to be
24 presented. It is possible that you can have an evidentiary
25 hearing on the afternoon of January 29th.

1 MR. GOREN: Okay.

2 THE COURT: It's a fairly long agenda in the morning.
3 What'll stay, what'll go, I don't know.

4 MR. GOREN: Not yet clear at this point. But I'm
5 also -- I mean, from the AIP perspective, we have three
6 witnesses. They've already submitted declarations. I don't
7 know that --

8 THE COURT: Do you want to take depositions, Mr.
9 Masumoto?

10 MR. MASUMOTO: I just wanted to -- but --

11 THE COURT: Are you going to put in any evidence? Are
12 you going to just -- is this just going to be based on the
13 declarations of the debtors?

14 MR. MASUMOTO: I assume so, Your Honor.

15 THE COURT: Okay. If -- do you anticipate cross-
16 examining? I'm not pinning you down, but --

17 MR. MASUMOTO: There may be cross-examination.

18 THE COURT: So we probably could do the -- I still
19 want to have a telephone conference next week. See if you can
20 pin all this down. If you have an agreement with Mr. Masumoto
21 that the only witnesses -- the only direct would be the written
22 declaration that were submitted in support of the motion,
23 possible cross-examination by Mr. Masumoto, it sounds like the
24 U.S. Trustee's not going to call any witnesses on its own. And
25 so we probably could do an evidentiary hearing that afternoon.

1 MR. GOREN: Okay. Thank you, Your Honor.

2 THE COURT: Mr. Zide, did you want to add something?

3 MR. ZIDE: Your Honor, could I just make -- I'd just
4 like to make one clarification, because the debtors filed a
5 reply to the proposed resolution. And I just wanted to make
6 clear for the record, that's not what was actually resolved
7 with the committee. It was actually a little more than that.

8 THE COURT: Just make sure that the order that you --
9 a new order is going to be submitted. It's going to deal with
10 the portion that I am approving now.

11 MR. ZIDE: Yes.

12 THE COURT: Make sure it's in a form satisfactory to
13 the U.S. Trustee and the committee, that will accurately
14 reflect what the agreement of the parties is. And as to the
15 participants in the KEIP and KERP, I'm going to hear that
16 probably on the afternoon of the 29th. Okay?

17 MR. GOREN: Thank you.

18 THE COURT: Thank you very much. All right, thank
19 you, Mr. Goren.

20 MR. GOREN: I'll turn the podium over to Mr.
21 Rosenbaum.

22 THE COURT: Okay.

23 MR. ROSENBAUM: Your Honor, Norm Rosenbaum for the
24 debtors. The next matter on the agenda is the motion of Basic
25 Life Resources, docket number 2590. I believe I heard Mr.

1 Moore had made an appearance.

2 THE COURT: All right --

3 MR. MOORE: Yes, Your Honor. Michael Moore is here,
4 and also Pamela Hill.

5 THE COURT: Go ahead. You can go ahead and argue your
6 motion.

7 MR. MOORE: Your Honor, you want me to argue the
8 motion?

9 THE COURT: I want you to say anything in support of
10 your position in the motion.

11 MR. MOORE: Our position is --

12 THE COURT: I've reviewed the papers.

13 MR. MOORE: Our position is, Your Honor, in response
14 to debtors' objection, is it was not timely filed. And so
15 therefore, it should be dismissed.

16 THE COURT: Well, you didn't file your motion on ECF.
17 It has to be filed on the electronic docket. The only way it
18 got there is the debtor filed it there, and immediately
19 thereafter filed its objection. And they were -- as they were
20 directed to by the Court.

21 They called. The Court didn't have the motion. The
22 debtor did. The debtor had got it filed. We instructed the
23 debtor, as soon as you file the motion -- it wasn't their
24 motion -- but as soon as the motion's filed, go ahead and file
25 your response. A half hour after your motion finally appeared

1 on the Court's docket the objection was filed. So with respect
2 to your seeking to strike the debtors' response, that's
3 overruled.

4 So go ahead and argue the merits of your position.

5 MR. MOORE: Well, Your Honor, before we do that --

6 THE COURT: No, go ahead and argue the merits of your
7 position.

8 MR. MOORE: Well, what we filed was with the clerk of
9 the court.

10 THE COURT: Excuse me. Go ahead and argue the merits
11 of your position, or I will cut your off. You have your
12 choice. If you wish to argue the merits of your motion, now is
13 the time to do it. I do not want to hear any argument about
14 the debtors, when the debtor filed its objection. Are you
15 going to argue your motion or not?

16 MR. MOORE: I think, Your Honor, that out motion
17 speaks for itself.

18 THE COURT: Okay.

19 MR. MOORE: That we do have an emergency, in the sense
20 that this ongoing amount of almost 15,000 dollars a day is
21 clearly something that should be addressed and resolved. And I
22 think otherwise, our statement in -- is clearly set forth.

23 THE COURT: Okay, thank you. Mr. Rosenbaum, I don't
24 need to hear from you. I'm going to take the matter under
25 submission, and I expect to enter an order resolving the motion

1 today.

2 MR. ROSENBAUM: Thank you, Your Honor.

3 Sorry, Your Honor. The next matter on is the cure
4 objections, Your Honor --

5 THE COURT: Okay.

6 MR. ROSENBAUM: -- at page 9 of the agenda.

7 THE COURT: Thank you.

8 MR. ROSENBAUM: Docket number 61. And I'll turn the
9 podium over to Mr. Engelhardt.

10 MR. ENGELHARDT: Hello, Your Honor. Stephan
11 Englehardt of Morrison & Foerster on behalf of the debtors.

12 THE COURT: Thank you.

13 MR. ENGELHARDT: Your Honor, I'd just like to provide
14 a brief update on the status of the resolution of the cure
15 objection of Digital Lewisville and where the parties are with
16 respect to that matter.

17 The Digital cure objection relates to a transaction
18 that itself was part of a broader transaction, in particular, a
19 pre-petition purchase and sale agreement between debtor EPRE
20 LLC and AFI. That transaction related to two different
21 properties: a property in Eden Prairie, Minnesota, and a
22 property in Lewisville, Texas.

23 Both those properties house critical data centers for
24 the debtors, which themselves house data from both the debtors
25 and AFI. The Eden Prairie facility was owned by the debtor

1 entity, and the Lewisville property is leased by GMAC Mortgage
2 from Digital Lewisville.

3 The purchase and sale agreement itself was executed in
4 order to allay concerns of AFI's and Ally Bank's regulators
5 concerning the housing of AFI and Ally Bank's data in buildings
6 that were subject to -- either owned or leased by entities in a
7 Chapter 11. And the agreement was designed and crafted to be
8 an economically neutral transaction. And it worked in the
9 following way.

10 The debtors conveyed a fifty-one percent property
11 interest in the Eden Prairie facility and a fifty-one percent
12 leasehold interest in the Lewisville lease to AFI, for a total
13 consideration of six million dollars. The agreement itself
14 calls for a mandatory unwinding, if you will, of that
15 transaction, in advance of the sale of any -- closing of any
16 sale of the platform assets. Thus, AFI will reconvey the
17 property right, reassign the lease back to the debtors, and the
18 same six-million-dollar consideration will go back to AFI.

19 The Digital Lewisville cure objection and sale
20 objection arises out of the Lewisville -- obviously, the
21 Lewisville lease portion of that transaction. They asserted a
22 cure objection. They asserted certain sales objections. The
23 parties have been working diligently over the last month or so
24 to resolve those objections. The parties are very near a
25 global resolution.

1 The debtors and Digital Lewisville have reached an
2 agreement in principle on the cure amount for a cure payment.
3 The parties are currently working through the reconveyance
4 transaction paperwork for that, for approval of the parties,
5 and also working out a manner in which AFI can have continued
6 access to the data in the data centers, after Ocwen occupies
7 those properties, for a certain period of time.

8 Subject to that, we'd like to adjourn this further to
9 January 29th. By that time, we are hopeful we will have a
10 global resolution. And if any -- I know Digital Lewisville
11 counsel is here. And I do not know if anyone else wishes to be
12 heard.

13 THE COURT: Does anybody wish to be heard?

14 MR. GREGER: Very briefly, Your Honor.

15 THE COURT: Just come on up to the microphone, so we
16 get a clear record.

17 MR. GREGER: Good morning, Your Honor. Michael Greger
18 of Allen Matkins Lock Gamble Mallory & Natsis, on behalf of
19 Digital Lewisville. I have no comments with respect to
20 counsel's statements, other than the documents speak for
21 themselves, and we would object to any characterization. We
22 believe that --

23 THE COURT: Don't worry about it. It's all going to e
24 blank in my mind after you leave here today. You're hopefully
25 going to get this resolved. I'll hear it on the 29th. Okay?

1 MR. GREGER: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. ENGELHARDT: If Your Honor has no further
4 questions --

5 THE COURT: No, I don't, Mr. Englehardt --

6 MR. ENGELHARDT: -- I will conclude. I will --

7 THE COURT: -- thank you very much.

8 MR. ENGELHARDT: Thank you, Your Honor. I'll turn the
9 podium back to Mr. Goren.

10 THE COURT: Okay, Mr. Goren?

11 MR. GOREN: Thank you, Your Honor. Just to give a
12 brief update on some of the remaining cure objections. We had
13 originally three on the agenda for today: OceanFirst, BBNT and
14 PNC, sort of the category of SBO, service-by-others servicers.

15 THE COURT: So I got a stipulation before. Is that
16 going to resolve --

17 MR. GOREN: Yes. That's what I was just -- we reached
18 agreement with them on a form of stipulation. Not terribly
19 substantive. It really just deals with the mechanics of how
20 they'll get their advances back post-closing, because they've
21 got now -- whereas they used to come to one person, now they
22 have three or four different people they need to look to. So
23 they just wanted some comfort on how the process would work, so
24 we entered into a stipulation with them about how it would
25 work.

1 The committee has reviewed it. The purchasers have
2 reviewed it. So we're -- I think that stipulation should
3 resolve those objections.

4 THE COURT: Why don't you do this, though. Why don't
5 you put this -- the stipulation isn't online yet, right?

6 MR. GOREN: No.

7 THE COURT: No. Why don't you do it on presentment,
8 five days, and it'll get entered. I don't think there's --
9 since it's been reviewed by the committee and others, I don't
10 think there's going to be any objections to it. Can it wait
11 that long to get entered?

12 MR. GOREN: I don't think that's a problem.

13 THE COURT: Okay. So put it on presentment.

14 MR. GOREN: And then finally, Your Honor, there was a
15 few others that were originally supposed to be scheduled today:
16 Wells Fargo and AFI. Both have been adjourned to the 29th.

17 With respect to Wells Fargo, we finally got some
18 information from them yesterday as to what their asserted cure
19 claim is. We sent it along to the ResCap businesspeople who
20 are reviewing it. In the scheme of things, it's a relatively
21 small number, so we're fairly confident we'll be able to come
22 to a resolution with them in advance of the 29th, but it's been
23 set for hearing on the 29th.

24 With respect to AFI and Ally Bank, by way of updated,
25 Ocwen has confirmed to the debtors that they will not be taking

1 assumption of the Ally Bank servicing agreement, which was the
2 subject of lots of back-and-forth earlier in the case. But
3 just so everything's clear, those loans will be serviced by
4 Ocwen in some capacity. Ocwen has engaged Ally Bank directly
5 to enter into an agreement on substantially similar terms to
6 what our current agreement is.

7 The debtors weren't getting any value for that
8 agreement under the sale agreement anyway, so this is sort of
9 economically neutral to the debtors.

10 THE COURT: Is there going to be a rejection damage
11 claim?

12 MR. GOREN: I wouldn't think so, at this point. I
13 mean, because we're not actually even rejecting the agreement.
14 It will just be terminated. So it's -- so Ocwen --

15 THE COURT: Okay.

16 MR. GOREN: -- Ocwen's --

17 THE COURT: Are there provisions for termination?

18 MR. GOREN: What?

19 THE COURT: Are there provisions that permit
20 termination?

21 MR. GOREN: Yes. I mean, we'll -- this will -- I
22 believe this will all be worked out.

23 THE COURT: Okay.

24 MR. GOREN: But it just -- because Ocwen is speaking
25 directly with Ally Bank about an agreement. But if for some

1 reason they're not able to do it, the loans will be serviced.
2 We have an estate subservicing agreement between the debtors
3 and Ocwen for any servicing that remains in the estate. And we
4 would expect that if for some reason they're not able to do it,
5 we would be -- we would have those loans serviced in some
6 capacity, under that agreement.

7 THE COURT: Okay, thank you.

8 MR. GOREN: And that is the update on that, Your
9 Honor. And I believe that is the end of the agenda.

10 THE COURT: Okay. Anybody else wish to be heard?

11 All right. So Mr. Goren, you and Mr. Masumoto will
12 confer with respect to the annual incentive plan. And Deanna's
13 out sick today, so you'll have to try tomorrow, see if you can
14 get a date and time for a telephone hearing. I'm hopeful,
15 since it doesn't sound like there's going to be extensive
16 evidence, that we can do it on the afternoon of the 29th.
17 Okay?

18 MR. GOREN: Okay.

19 THE COURT: All right, thank you very much. We're
20 adjourned.

21 MR. GOREN: Thank you.

22 (Whereupon these proceedings were concluded at 11:01 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: January 17, 2013